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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. 411

HELENE MARCEAU SIDEBOTHAM,
Petitioner;

vs.

W. A. ROBISON, Administrator of Estate of Robert Sidebotham, deceased, ROBERT SIDEBOTHAM and JAMES SIDEBOTHAM,
Respondents.

REPLY TO PETITION FOR A WRIT OF CERTIORARI.

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Petitioner on pages 3 and 4 of her petition, under the heading of "Statement", openly admits that she played fast and loose with a state Court.

The "Statement" on page 3 begins by saying:

> "Petitioner originally filed a petition before the California State Probate Court,"

and on the next page (4) the petitioner says (referring to herself)

> "*She therefore precluded* the said court from assuming jurisdiction of the subject matter." (All italics ours.)

By this affirmative action she caused the Court to proceed and render a solemn judgment, and she cannot now repudiate the judgment which would do a grave injury to the respondents.

Aside from the obvious *estoppel* against petitioner she *repeatedly* tries to mislead this Court by her statements that the Probate Court of California was a Court of "limited jurisdiction" (page 3 of petition) and not a Court of general jurisdiction. This is the entire basis of her petition as she herself says.

The notion that the probate division of the Superior Court of California is not a Court of "general jurisdiction" has long since been exploded.

In the leading California Supreme Court case of *Schlyen v. Schlyen*, 43 Cal. (2d) 361 at 375 (1954), the Court, per Shenk, J. said as follows:

> "*Notwithstanding the abolition of 'Probate Courts' as such by the Constitution of 1879 this court continued thereafter to refer to the superior court sitting in probate as the 'probate court' thus implying at least that it is a separate and distinct court of the state, which it is not.* Such a reference has been employed by the reviewing courts of this state in cases too numerous to mention and *is, of course, inaccurate.* But no harm is done where it is understood that such

reference is to the superior court sitting in the exercise of its probate jurisdiction. It may then be considered to be no more than a convenient way of conveying the idea of *the court exercising a particular function.* Such expressions are colloquially used when reference is often made to the 'Domestic Relations Court,' the 'Divorce Court,' the 'Criminal Court,' the 'Traffic Court,' and so on. But *such expressions do not of course give those courts official status as separate courts* and it should be so understood."

Other cases to the same effect, going back as far as 1894, are:

In re Thompson's Estate, 101 Cal. 349, 353 (1894);

Wells Guardianship, 140 Cal. 349, 352 (1903);

Estate of Riccomi, 185 Cal. 458, 463 (1921);

Medeiros v. Cotta, 130 C.A. (2d) 740, 746 (1955);

Medeiros v. Silva, 132 C.A. (2d) 771, 775 (1955);

Medeiros v. Medeiros, 138 C.A. (2d) 194, 198 (1955).

Even assuming that the petition in the probate division of the Superior Court had to allege some fact showing privity with the estate of the decedent, we find such allegation in the following statement in her petition for determination of heirship under sec. 1080 of the Probate Code of California:

"That said community property, has never been partitioned, either by agreement of petitioner

and decedent, judicial decision, or otherwise; and upon the death of decedent, petitioner became entitled to receive one-half thereof *by survivorship,* and *retain the other half thereof,* which she at all times has owned from the moment of its acquisition during the marriage." (Record p. 63.)

While petitioner did not allege that she was entitled to take part of the estate as one of the *"next of kin"* she did clearly allege that she was entitled to take part of the estate as an *heir at law,* i.e. as a former wife allegedly entitled to inherit under the community property law of California. This distinguishes the case of *Beckett v. Selover,* 7 Cal. 215 cited on page 13 of the petition filed herein.

Whether she asserted her claim in the right tribunal or not is immaterial. The fact conclusive on her is that she did ask a Court of *unlimited* jurisdiction to pass on her claim on the merits and that the Court did so, adversely to her. This action she cannot reopen, as the learned Court of Appeals below properly held. To do so would be to irreparably injure respondents.

CONCLUSION.

This Court in approving the application of the doctrine of res judicata in this case (by denying the writ) will be doing no injustice.

Petitioner stated in her complaint in the District Court of Nevada when she divorced the decedent on November 14, 1946 there was "*no* community property", (Defs.' Exhibit E), then he died in December 1951, and she filed her petition on December 4, 1952 (Record pages 61-64) for determination of heirship.

In 1955 the California legislature amended the Code of Civil Procedure to provide that where a surviving spouse outlives a deceased husband or wife by more than four years it is presumed that all the property of the decedent was his or her *separate* property (California Code of Civil Procedure, sec. 1963, sub. 40). This amendment became necessary to prevent long since forgotten wives and husbands who obtained divorces while both spouses were young and impecunious, from looting their ex-husband's or ex-wife's estates when they happened to die many years later with large assets.

The record in this case shows that the petitioner herein was far from being an altruist. The complaint in her separate maintenance suit, commenced in Los Angeles on March 31, 1933, and particularly the settlement agreement attached to it compounding a felony. (Defendants' Exhibit C at the trial transmitted to this Court with all the other original exhibits as well as the printed record), shows that her sordid marriage was completely at an end in 1933, if

not before. Any attempt, started six years after the Nevada divorce, obtained at petitioner's behest to get half of his estate at the expense of his children deserves no consideration whatsoever.

The petition for a writ of certiorari should be denied.

Dated, September 11, 1957.

Respectfully submitted,

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